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April 27, 1995

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William F. Caton, Acting Secretary
Federal Communications Commission
Common Carrier International
P.O. Box 358115
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RM 8606

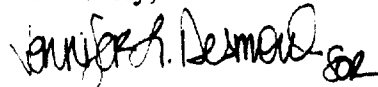
Re: Reply Comments of One Call Communications, Inc. d/b/a OPTICOM on
CompTel's Filing in CC Docket No. 92-77 Proposing a Rate Ceiling on
Operator Service Calls and Petition for Rulemaking of National
Association of Attorneys General Regarding Additional Disclosures by
Some Operator Services Providers

Dear Mr. Caton:

Enclosed are one original and nine copies of One Call Communications, Inc. d/b/a
OPTICOM's Reply Comments in the above-referenced proceeding.

Please date stamp and return the enclosed duplicate copy of these Reply Comments as
acknowledgement of their receipt.

Sincerely,



Randall B. Lowe

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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CC Docket No. 92-77

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RM-8606

REPLY COMMENTS OF
ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM

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Dated: April 27, 1995

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Summary

One Call Communications, Inc. d/b/a OPTICOM ("Opticom") continues to support the Competitive Telecommunications Association ("CompTel") and the National Association of Attorney's General's ("NAAG's") intent in proposing an alternative to Billed Party Preference ("BPP"). Opticom agrees with CompTel that BPP has been "overtaken by events" and is no longer necessary or consistent with the Commission's objectives.

The Commission has maintained that the combination of TOCSIA, OSP and aggregator rules and Commission enforcement actions have served to resolve any "residual" problems in the OSP industry. If that is true, both rate caps and additional disclosure requirements may be drastic solutions to fairly insignificant problems. Indeed, the Commission has found that the problem of "excessive" rates is confined to a "small segment" of the industry which consumers are increasingly able to avoid by utilizing the highly advertised dial around option. The need for a system such as BPP has clearly come and gone. Alternatives to BPP should be encouraged, but only to the extent the Commission concludes that they are needed because the marketplace is not functioning properly. Even if the Commission does so conclude, there are numerous legal and factual issues, such as the dictates of TOCSIA and the carrier-initiated rate requirements of the Communications Act, that need to be considered and may make the instant rate cap proposal impractical. In the final analysis, vigorous enforcement of TOCSIA and its related provisions by the Commission may already provide the means by which the remaining concerns of BPP can be alleviated.

**Before the
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Washington, D.C. 20554**

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**REPLY COMMENTS OF
ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM**

One Call Communications, Inc. d/b/a OPTICOM ("Opticom"), by its attorneys, hereby replies to the comments filed in response to the Commission's request for comments on the Competitive Telecommunications Association's ("CompTel's") *ex parte* Filing in Docket No. 92-77 proposing a rate ceiling on operator service calls¹ and the Petition for Rulemaking of the National Association of Attorneys General ("NAAG") requesting additional disclosures by some operator services providers ("OSPs").² Opticom shares the views of the majority of the

¹*Ex Parte* Communication, CC Docket No. 92-77 (filed March 13, 1995) (hereinafter referred to as "*Ex Parte* Communication").

²In re Disclosures by Operator Service Providers of Serving Public Phones, Petition of the National Association of Attorney's General Telecommunications Subcommittee for Rules to Require Additional Disclosures by Operator Service Providers of Public Phones, RM-8606 (filed February 8, 1995) (hereinafter "NAAG Petition").

commenting parties that the proposal submitted by CompTel, albeit appealing, may be unworkable. Opticom also believes that the NAAG alternative is overbroad, unnecessary, misleading and discriminatory.

I. Introduction

The Commission requested comments on the CompTel proposal which calls for a rate cap on 0+ operator service calls. The proposal advocates the use of a benchmark rate applied on a per minute basis, without regard to such factors as time-of-day, day-of-week, length of haul or call type. CompTel proposes these rate caps as an alternative to Billed Party Preference ("BPP").

CompTel's proposal maintains that "in a statistically small number of cases, callers who choose not to dial around the presubscribed OSP are charged excessive rates."³ As such, according to CompTel, the sole remaining issue of BPP is the rates charged by some OSPs. In an effort to appease the few consumers who choose not to dial around and indeed are charged "excessive" rates, CompTel has proposed a rate ceiling scheme as an alternative to BPP and as a solution to any remaining "rate problems."

The Commission also requested comments on an alternative proposal by NAAG that OSPs be required to add a recorded disclosure for consumers before they connect calls. NAAG maintains that the OSP problem goes deeper than rates; it alleges that some providers violate FCC operator services rules pertaining to call branding, providing rates upon request and the unblocking of access codes.

Any alternative to BPP is welcome. CompTel summed it up best when it said that BPP is "now a hugely expensive solution to a small and diminishing problem."⁴ Opticom remains convinced that the enormous costs and other problems associated with BPP outweigh any potential benefits of such a system. BPP will only serve to confuse consumers of 0+ interLATA

³Id. at 2.

⁴Ex Parte Communication at 1.

services; restrict, if not eliminate, competition among OSPs, IXC's and independent payphone providers; and will require an exorbitant amount of ratepayer dollars to implement.

The majority of the twenty-four commenting parties in this proceeding opposed both the CompTel and NAAG proposal.⁵ Six commenting parties supported the CompTel proposal⁶ and six others believed that, although rate caps may be appropriate, the particular rate scheme proposed by CompTel is unworkable.⁷ The commenting parties almost unanimously opposed NAAG's additional disclosure proposal.

II. Comments on the CompTel Rate Cap Proposal

Although Opticom and some of the commentors do not oppose CompTel's "workable" rate ceiling,⁸ Opticom is still not convinced that the issues facing the OSP industry are occurring to a level that would necessitate the proposed rate cap.

A. Are Rate Caps Truly Justified?

1. BPP Issues Are Being Resolved

A majority of the parties commenting on the CompTel rate cap proposal agreed with CompTel that the implementation of BPP is not justified. As stated by one such commentor, BPP has certainly been "overtaken by events."⁹ The 1994 Comments in the BPP Docket clearly

⁵Commentors opposing the rate ceiling proposed by CompTel included large interexchange carriers ("IXCs"), local exchange carriers ("LECs"), OSPs and various public utilities commissions and other organizations, including; AT&T, MCI, Sprint, Southwestern Bell, Oncor, CNSI, U.S. Osiris, NAAG (in part), Florida Public Service Commission and the Colorado Public Utilities Commission.

⁶See Comments of APCC, Bell Atlantic, CompTel, NYNEX, Teltrust and U.S. Long Distance.

⁷See Comments of USTA, Operator Service Company, Intellical, NTC, Gateway Technologies and Pacific Bell and Nevada Bell.

⁸Id.

⁹See Comments of NYNEX at 2; Ex Parte Communication at 1.

demonstrate that BPP is neither necessary nor consistent with the Commission's stated objectives with respect to the operator services industry.¹⁰ BPP remains a plan that would cost the industry and its ratepayers over a billion dollars and its implementation is several years away.¹¹ Recent studies have indicated that BPP would affect the routing of less than 20% of operator-assisted calls since the remaining calls are placed using the dial-around access option.¹² Moreover, a massive change from a system the industry has spent years educating consumers about would only result in immense customer confusion.

An alternative to BPP, such as the rate ceiling proposed by CompTel, may assist the Commission in achieving the few remaining goals of BPP. It is essential that if the Commission truly believes that the OSP industry needs further regulation, it chooses an alternative that is far less costly, involves less regulatory oversight and can be more quickly implemented than BPP. Opticom supports alternatives, such as the one proposed by CompTel, but the design and implementation of such a rate scheme requires a careful analysis. As stated by one of the commenting parties, "rate ceilings should be regarded with extreme caution."¹³

2. TOCSIA Has Been Successful in Regulating OSPs

Congress passed the Telephone Operator Consumer Services Improvement Act¹⁴ in order to protect consumer interests while encouraging technological and service innovation in the operator services industry. The notification and unblocking provisions of TOCSIA, as well as

¹⁰See Comments of AT&T at 2-3.

¹¹See Ex Parte Communication at 2; Comments of NYNEX at 2.

¹²Ex Parte Communication at 1; Comments of NYNEX at 2.

¹³Comments of Operator Service Company at 1.

¹⁴The Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. No. 101-435, 104 Stat. 986 (1990) ("TOCSIA").

the implementing provisions codified in the Commission's Rules¹⁵ ensure that all callers are informed of the identity of the presubscribed OSP as well as its rates, if so desired. Furthermore, these rules allow all customers to access the OSP of their choice from all aggregator locations. Carriers have spent millions of dollars educating consumers on how to utilize this "dial around" access option. The Commission itself has recognized that the "dial around" access method is "efficient" and has "met with a high degree of consumer acceptance."¹⁶

The Commission has held that TOCSIA is an effective regulator of the operator services industry. In fact, in a report to Congress, the Commission stated that:

[W]e have concluded that conditions in the operator services marketplace are such that we need not initiate a further proceeding to prescribe regulations concerning rates for operator services at this time. We find that the marketplace is functioning well. Consumers are generally able to reach their carrier of choice when placing calls from aggregator locations because access to these carriers is largely unblocked as required by TOCSIA and the Commission's Rules. Further, the level of compliance with the posting and branding of TOCSIA and the Commission's rules [*sic*] is high. We find that the informed consumer choices that these rules [*sic*] make possible is the best means of ensuring that the rates consumers pay for interstate operator service calls are just and reasonable. We therefore conclude that the objectives of TOCSIA are being achieved; consumers are being protected from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls and consumers have the opportunity to make informed choices in making such calls.¹⁷

With proper enforcement of these Rules, the case for additional regulations such as rate ceilings is much less compelling.

¹⁵47 C.F.R. §§64.703-705.

¹⁶In re Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, *Report and Order and Request for Supplemental Comment*, 7 FCC Rcd. 7714, 7721 at para. 32 (1992).

¹⁷Final Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 at 2-3 (November 13, 1992) (hereinafter "Final Report").

3. Vigorous Use of FCC Enforcement Powers are Effective Tools Against High Rates

The Commission has stated that the problems associated with the operator services industry are not widespread, but instead arise with respect to only a few OSPs.¹⁸ Many commentators maintained that not even price caps will stop the type of improper behavior engaged in by a minority of OSPs.¹⁹ The same OSPs who disregard TOCSIA and the Commission's corresponding Rules may simply choose to ignore any rate caps imposed upon them. Instead of new regulations, aggressive use of the Commission's already existing enforcement measures may be the only effective way to curb this behavior.²⁰

B. Rate Caps May be Beneficial, But Their Implementation Raises Serious Legal and Factual Concerns That Must be Addressed Beforehand

Regardless of the cosmetic appeal of rate caps generally, rate cap regulation raises a variety of legal and factual issues that need to be addressed before it is imposed on the industry. Furthermore, the rate cap "solution" to BPP has previously been suggested by CompTel²¹ and subsequently rejected by the Commission as involving "significant structural changes to the current operator services market, with the attendant costs, customer confusion and disruption which follow such changes, or appears unlikely to achieve its desired result, or both."²²

¹⁸Final Report at 3.

¹⁹See Comments of MessagePhone at 2.

²⁰See Comments of U.S. Osiris at 4.

²¹See *Ex Parte* Letter dated September 18, 1992, from CompTel, *et al.* in Docket 92-77 and *Ex Parte* Letter dated August 11, 1992 from Danny E. Adams on behalf of ZPDI, Inc. in Docket No. 92-77.

²²In re Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, *Report and Order and Request for Supplemental Comment*, 7 FCC Rcd. 7714, 7725 at paras. 61-62 (released November 6, 1992).

1. Legal Impediments to Rate Caps

a. TOCSIA

Although rate caps may seem to be one solution to the perceived "problems" in the operator services industry,²³ such a regulatory scheme would be contrary to TOCSIA which mandates that a "cost plus" analysis of the rates charged by OSPs to determine whether those rates are just and reasonable. In particular, TOCSIA requires OSPs to file informational tariffs with the Commission and their rates will be found just and reasonable if they cover the OSP's reasonable costs of providing services plus a reasonable profit.²⁴ Further rate regulation is not permitted unless the Commission first determines that market forces are not securing just and reasonable rates and practices; a determination which has not yet been made.²⁵ As such, the imposition of a rate ceiling is also contrary to the Commission's findings and Congress' stated intent to regulate the operator services industry through reliance on marketplace competition.²⁶ In short, and as one commentor pointed out, the Commission "[is] bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of these purposes."²⁷

²³See Comments of Opticom at 5, where it noted that of the millions of operator services calls placed through Opticom during 1994, only .0005% resulted in complaints filed at the Commission during that year.

²⁴H.R. Rep. No. 213, 101st Cong., 1st Sess. (1989).

²⁵Id.

²⁶See Comments of MCI at 3.

²⁷See Comments of Oncor Communications, Inc. at 4. (*citing MCI Telecommunications Corp. v. AT&T*, 114 S.Ct. 2223, 2231-32 n.4 (1994) and *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995) which states that "[t]he FCC cannot abandon [a] legislative scheme because it thinks it has a better idea.").

b. Section 201 of the Communications Act requires that rates be based on costs

The CompTel proposal would adopt a benchmark rate for 0+ calls on a simple per minute basis, without regard to time-of-day, day-of week, length of haul or call type. Unfortunately, the CompTel proposal "fails in the face of the realities of the cost structure of the business."²⁸ CompTel's original *ex parte* letter maintains that the rate schedule was devised by evaluating a sample of complaints filed with the Commission about operator service charges and setting a schedule so that all charges would be below those which prompted such complaints. Unfortunately, such a rate schedule is not based on the cost or value of the services offered, but is instead formulated on "end user tolerance thresholds."²⁹

Section 201 of the Communications Act mandates that the Commission ensure that the rates charged by common carriers be "just and reasonable."³⁰ As stated in Opticom's Comments, the Commission has "long adhered to the policy that the cost of providing service is 'at the heart' of the statutory requirements of Section 201 of ensuring just and reasonable rates."³¹ OSP costs must be "directly controlling" in any rate scheme, or, certainly, are "to be considered the reference or benchmark by which to measure departures therefrom."³² Therefore, it follows that Section 201, similar to TOCSIA, provides that OSP rates should be based on each, individual

²⁸Comments of Pacific Bell and Nevada Bell at 1.

²⁹See Comments of U.S. Long Distance at 3.

³⁰47 U.S.C. §201.

³¹Comments of Opticom at 6-7 (*citing In re American Telephone and Telegraph Company*, Revision to Tariff F.C.C. No. 259 (WATS) for Advanced 800 Service, 102 F.C.C.2d 701, 706 (1984); Private Line Rate Cases, 34 F.C.C. 244, 297 (1961); 34 F.C.C. 217, 231 (1962)).

³²In re Implementation of Requirements of the International Maritime Satellite Telecommunications Act, 91 F.C.C.2d 245, 255 (1982). See also AT&T Private Line Cases, 61 F.C.C.2d 587, 609 (1978).

OSP's costs - - not the costs of a sampling of consumer complaints, other OSP costs,³³ the costs of any dominant or "bellweather" carrier³⁴ or the "average" rates of "predominant" carriers (e.g., AT&T, Sprint, MCI or LDDS).³⁵

c. The Communications Act requires carrier-initiated rates

It is well established that Sections 201 to 205 of the Communications Act³⁶ limit the Commission's authority to determine and prescribe lawful rates for all carriers.³⁷ Opticom reiterates the point made in its Comments that Section 205 of the Act requires that telecommunications rates must be carrier-initiated. A carrier may file tariffs containing new rates at any time. Only after carrier rates are filed does the Commission have the power to investigate and prescribe them.³⁸ Moreover, Section 205 mandates that this type of investigation only be conducted after a "full opportunity for hearing" and a determination that any rate to be prescribed will be "just and reasonable."³⁹ Accordingly, the Commission must then, pursuant to Section 201, engage in the determination that the rates to be prescribed are just and reasonable

³³In its Comments, CompTel amends its original *ex parte* filing and maintains that, in addition to setting the rate ceiling based on a sample of operator service complaints filed with the Commission, CompTel "conducted an informal review of the cost structures of its OSP members to ensure that the benchmark rate allowed reasonable cost recover." Comments of CompTel at 7-8. However, even the formulation of a composite rate scheme based on various carriers costs would still not reflect individual carriers' costs as required by Section 201 of the Communications Act.

³⁴See Comments of Sprint at 10.

³⁵See Comments of the Colorado Public Utilities Commission at 10.

³⁶47 U.S.C. §§201-205. These sections, accordingly, would include operator services providers, even though they submit tariffs to the Commission pursuant to Section 226 of the Act.

³⁷47 C.F.R. §205.

³⁸See e.g., AT&T v. FCC, 487 F.2d 864, 872 (2nd Cir. 1973).

³⁹Id.; Permian Basin Area Rate Cases, 390 U.S. 747, 777-79 (1968)..

based on that carrier's costs. The Commission has no authority to circumvent the statutory mandates of the Act and prescribe rates in an alternative fashion.⁴⁰ To prescribe a rate which can be revised only with prior Commission approval, without such a hearing and determination, would be a prohibited *de facto* prescription.⁴¹

Furthermore, Congress established more lenient rate oversight provisions for OSPs in enacting Section 226 of the Communications Act.⁴² This evinces an intent on the part of Congress not to regulate OSP rates with the same level of heightened scrutiny as carriers subject to the Section 203 and Part 61 tariff requirements. By contrast, if the Commission were to impose rate cap regulation on the OSP industry, the statutory scheme which treats OSPs differently from other common carriers is apparently thwarted. In effect, OSPs would be treated like the most regulated carriers in the industry -- the Bell Operating Companies and AT&T -- contrary to Congress's intent in TOCSIA. If challenged, an argument that the Commission's general authority provides the basis for this type of re-balancing, in the face of an articulated regulatory structure, is questionable.⁴³ The Commission maintains no general authority to subvert the intent of the Communications Act as written.

d. Rate cap regulation may implicate constitutional takings issues

Rate caps inherently divorce rates from costs and therefore may not allow an OSP to recoup its reasonable costs of providing service plus a reasonable profit. As described above, the CompTel proposal may exacerbate this problem because it is not fashioned on individual OSP costs. Any rate scheme chosen by the Commission must protect each carrier's constitutional

⁴⁰AT&T v. FCC at 880.

⁴¹Id.

⁴²47 U.S.C. §226(h)(2).

⁴³For example, the Commission's Section 4(i) authority cannot validate agency action that contradicts the statutory regime of the Communications Act. See e.g., AT&T v. FCC.

right to recover its own reasonable costs of providing service.⁴⁴ Caselaw clearly holds that rates which do not allow a carrier to achieve a reasonable return on its property are "unjust, unreasonable and confiscatory."⁴⁵ CompTel has itself recognized that carriers must be allowed to "earn enough revenue not only to cover operating expenses but also to pay for the capital costs of doing business, including service on debts and dividends on stock."⁴⁶ Certainly, a rate cap that does not allow a carrier, even one with a unique cost structure, to recover its costs, may be viewed as an unjust and unreasonable confiscation of its property in violation of the Constitution.⁴⁷

2. Factual Impediments to Rate Caps

a. How will the rate cap be developed and adjusted?

As previously stated, a rate cap must represent the costs of each individual carrier subject to that cap in order to be "just and reasonable" and ensure that each carrier recovers its costs plus a reasonable profit. A rate ceiling for small to mid-sized OSPs, for instance, cannot be tied to the rates of dominant carriers. The rates charged by carriers such as AT&T, Sprint and MCI are driven by entirely different economies of scale than their small OSP counterparts.

⁴⁴See e.g. Permian Basin Area Rate Cases, 390 U.S. 747, 769 (1967) (A utility is entitled to rates that allow it, under "honest, economical and efficient management," to achieve a fair overall return). See also D.C. Transit System v. Washington Metro Area Transportation Commission, 350 F.2d 753, 778 (D.C. Cir. 1965) ("rate fixed without particularized reference to [debt service and other] needs does not satisfy any standard of ratemaking of which we are aware"). See also Nader v. FCC, 520 F.2d 182, 191 (D.C. Cir. 1982).

⁴⁵See Comments of CompTel at 9 (citing Bluefield Water Works & Improvement Co. v. Public Service Commission, 262 U.S. 679, 690 (1923); Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (return on equity must be "sufficient to assure confidence in the financial integrity of the enterprise"); Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1967) (rate must "maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed"))).

⁴⁶Comments of CompTel at 9 (citing United States v. FCC, 707 F.2d 610, 612 (D.C. Cir. 1983)).

⁴⁷U.S. CONST., amend. V.

Moreover, as suggested in Opticom's Comments, rate ceilings necessitate rate floors. If all carriers are indeed subject to the same rate cap, a minimum rate level must be set to ensure that dominant carriers are not allowed to price operator services at predatory levels while recouping the shortfall from their other services.

At a minimum, any OSP rate ceiling must also provide for annual adjustments. Commentors recognized that any rate cap scheme must contain an automatic mechanism for annual adjustments reflecting the rate of inflation⁴⁸ and changes in productivity.⁴⁹ After selecting such indexes, the Commission must also determine what change in that index or other factors which would serve as a basis for adjusting the rate ceiling.

The Commission should also consider how it will address, and how it will permit carriers to address, consumer complaints that may still arise when calls are placed through something other than a "name brand" OSP. If rate caps are instituted, the Commission should impose liability for operator services calls on the consumers who incur them. With rate caps in place, a consumer should not be able to claim a rate is "excessive" in an attempt to avoid paying for operator services calls. As a result, consumer non-payment of operator services charges to a LEC or credit card company should result in automatic termination of local service by the LEC.

b. What services will the rate cap cover?

CompTel's *ex parte* letter was unclear as to what operator services would be subject to the rate cap. Some commentors to this proceeding indicated that any rate cap scheme should apply only to the categories of operator services calls indicated by CompTel, namely, traditional collect, calling card, third party and person-to-person calls placed from aggregator locations.⁵⁰

⁴⁸See Comments of Operator Service Company at 4. The Commission could choose some proxy for the purchasing power of money, such as the Gross National Product-Price Index, the Consumer Price Index or the Producer Price Index. See Comments of Opticom at 12.

⁴⁹See Comments of Opticom at 12.

⁵⁰See Comments of Operator Service Company at 3.

Enhanced services such as voice messaging, voice mail, store and forward technology, as well as to be developed value-added features should, on the other hand, be exempt from rate regulation because it is essential that the services made available by OSPs which provide customers with additional value be priced at higher levels. Moreover, some enhanced services are structured and priced in such a way that application of any price cap to them would be excessively difficult.

c. Is the rate cap review process workable?

CompTel's rate ceiling provides an "out" for carriers who cannot make a reasonable profit under the cap. However, any rate cap review process must be available on an individualized, streamlined basis to all carriers, especially small carriers with limited resources.⁵¹ CompTel suggested seven cost factors that the Commission should consider when determining whether a carrier's costs of providing services should allow it to charge rates above the rate cap. Opticom also suggested that the Commission consider other tangible costs of doing business; such as technological or service innovations and development costs as well as various exogenous costs of doing business, such as changes in the general level of prices, changes in national tax policies and rates and changes imposed by regulation, legislation or judicial decree. It would also be necessary to develop the means or method by which costs would be determined and allocated as well as a method of deriving rates based on those costs such as fully distributed costs or marginal costing procedures.⁵²

d. LEC monitoring mechanism may not be workable

CompTel's proposal requires that billing LECs supply the Commission with quarterly reports indicating which OSPs are not in compliance with the rate cap. However, some

⁵¹See Comments of Operator Service Company at 4.

⁵²See Comments of NTCA at 4 ("Absent a viable, streamlined and low cost method for justifying rates above the rate ceiling, this Commission effectively eliminates operator services providers ability to provide such cost justification."); See also Comments of MessagePhone, Inc. at 5.

commentors were concerned with the LEC's role with respect to OSP rate monitoring, as recommended by CompTel. Moreover, this requirement would be both administratively and financially burdensome to most LECs.⁵³ Even large LECs requested "cost recovery" for OSP monitoring and reporting.⁵⁴ The associated costs would inevitably be passed on to the consumer in the form of increased local service fees. If only a minority of consumers are complaining about "excessive" operator services charges, the majority of consumers should not have to pay more for their local telephone service in order to appease them.

III. The NAAG Proposal is Unnecessary and Improper

In its Petition for Rulemaking, NAAG proposed that OSPs whose rates are not at or below dominant carrier rates be required to make the following disclosure prior to connecting each call, stating:

This may not be your regular telephone company and you may be charged more than your regular telephone company would charge for this call. To find out how to contact your regular telephone company call 1-800-555-1212.⁵⁵

As stated earlier, the Commission, through its implementation of TOCSIA, already ensures that consumers are able to make educated choices when placing operator services calls. The additional disclosure proposed by NAAG is therefore unnecessary and redundant. Indeed, the proposed disclosure is nothing short of confusing. A consumer's "regular" telephone company may assess rates which are equal to or greater than the OSP presubscribed to that particular location - and there is no feasible way for a LEC to make that determination for the consumer.

⁵³Comments of NTCA at 4 ("While the proposed monitoring may be simple for the larger carriers who agree to the proposal, for NTCA members, it represents a new layer of reporting that must be assumed by the small company irrespective of existing staffing, existing regulatory burdens or existing business operations.").

⁵⁴See Comments of Pacific Bell and Nevada Bell at 3.

⁵⁵NAAG Petition at 4.

The Comments indicate that the LECs staunchly oppose having to bear the administrative and cost responsibilities involved in providing information about a consumer's "regular" telephone company, if that information is even available.⁵⁶ The NAAG proposal would also, in effect, impermissably tie all OSP rates to those of another carrier and, in the process, would penalize OSPs whose rates may be above the "regular telephone company" even though such rates are just and reasonable. Such a proposal disregards an individual carrier's costs and market conditions and would only serve to impede, rather than facilitate, competition in the industry.

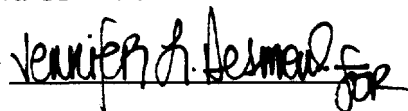
⁵⁶Comments of NYNEX at 3.

IV. CONCLUSION

BPP is not and never has been a solution. Existing regulations and the restraints of the competitive marketplace ensure that consumer rights are protected and technological innovation continues unfettered. The problem of "excessive" rates is confined to only a "small segment" of the operator services industry, which consumers are increasingly able to avoid due to the massive consumer education efforts initiated by all carriers regarding the dial around access option. BPP, then, has certainly been "overtaken by events." Alternatives, such as those proposed by CompTel and NAAG should continue to be solicited. The Commission, however, should view all such proposals with the same scrutiny as it has viewed BPP - for its effects on consumers, OSPs and the future of the telecommunications industry as a whole. Instead, the Commission may also find that the aggressive enforcement of TOCSIA and its related provisions may well be the best means to address the final concerns which BPP attempted to raise.

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April 27, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments submitted on behalf of One Call Communications, Inc. d/b/a OPTICOM on April 27, 1995, have been sent by United States first class mail, postage prepaid, this 27th day of April, 1995, to the following:

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